FFICE COPY

Supreme Court, U.S.
FILED
NOV 26 1971
E. ROBERT SEAVER, CLE

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 70-87

POLICE DEPARTMENT OF THE CITY OF CHICAGO, ET AL.,

Petitioners,

vs.

EARL D. MOSLEY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE CONTROLLER-CHAMBERS PRINTING COMPANY, CHICAGO — 56

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1971.
CERTIORARI GRANTED OCTOBER 12, 1971.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 70-87.

POLICE DEPARTMENT OF THE CITY OF CHICAGO, ET AL.,

Petitioners,

vs.

EARL D. MOSLEY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	PAGE
Chronological List of Relevant Docket Entries	1
Complaint for Injunction and Declaratory Relief	3
Answer	8
Plaintiff's Requests for Admission Nos. 1-7 Directed to Defendants	10
Report of Proceedings on June 11, 1969	12

Witness:

Earl Mosley—

Direct Examination 17

Cross-Examination 28

Defendants' Motion for Directed Verdict, filed June 11, 1969 33

Order Granting Defendants' Motion for a Directed Verdict entered July 22, 1969 34

Findings of Fact and Conclusions of Law, filed August 19, 1969 35

Order Dismissing Complaint, filed August 19, 1969 ... 38

Notice of Appeal, filed by Plaintiff September 17, 1969 39

Certificate of Clerk of the District Court 40

Judgment Order, entered by the Court of Appeals for the Seventh Circuit on October 29, 1970 41

Opinion of the Court of Appeals for the Seventh Circuit, filed October 29, 1970 42

Order entered by Mr. Justice Marshall, as Circuit Judge for the Seventh Circuit on January 20, 1971, Extending Defendants' Time for Filing a Petition for Certiorari to February 26, 1971 47

Order entered by the Supreme Court on October 12, 1971, Granting a Writ of Certiorari and Consolidating Cause with Grayned v. City of Rockford, No. 70-5106 48

APPENDIX.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES.

In the United States District Court
For the Northern District of Illinois,
Eastern Division.

No. 68 C 1979

October 23, 1968—Complaint for injunction and declaratory judgment filed.

November 15, 1968—Marshal's return, showing service of summons on Superintendent Conlisk and Chicago Police Department, filed.

November 26, 1968—Marshal's return, showing service of summons on Richard J. Daley, filed.

February 25, 1969—Answer of defendants filed.

June 11, 1969—Plaintiff's requests for admissions, Nos. 1-7, directed to defendants, filed.

June 11, 1969—Trial of action commenced. Evidence for plaintiff heard and plaintiff rests.

June 11, 1969—Defendants' motion for directed verdict, with supporting memorandum, filed.

July 1, 1969—Plaintiff's memorandum in opposition to defendants' motion for directed verdict filed.

July 9, 1969—Defendants' reply memorandum in support of their motion for directed verdict filed.

July 22, 1969—Defendants' motion for a directed verdict granted.

August 19, 1969—Findings of fact and conclusions of law entered. Order entered dismissing complaint.

September 17, 1969—Notice of appeal filed by plaintiff.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

No. 18021

October 25, 1969—Record on appeal filed.

January 15, 1970—Appellant's brief and appendix filed.

April 16, 1970—Appellees' brief filed.

September 23, 1970—Oral argument heard. Cause taken under advisement.

October 29, 1970—Judgment order entered, reversing, with costs, and remanding to District Court with directions. Opinion by Judge Hastings filed.

November 6, 1970—Order entered staying mandate 30 days.

December 18, 1970—Mandate issued.

December 21, 1970—Order entered recalling mandate and staying it for 30 days.

January 25, 1971—Notice filed of order of Supreme Court granting extension of time to file petition for certiorari to February 26, 1971.

March 3, 1971—Notice filed of filing petition for certiorari on February 25, 1971.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 70-87

January 20, 1971—Order entered by Mr. Justice Marshall, Circuit Justice for the Seventh Circuit, extending time for filing petition for certiorari to February 26, 1971.

February 25, 1971—Petition for writ of certiorari filed by defendants.

October 12, 1971—Order entered granting certiorari. Cause ordered consolidated with *Grayned* v. *City of Rockford*, No. 70-5106.

[C2] IN THE UNITED STATES DISTRICT COURT.

For the Northern District of Illinois,

Eastern Division.

EARL D. MOSLEY,
Plaintiff,

vs.

POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, Superintendent of the Police Department, etc., and RICHARD J. DALEY, Mayor of the City of Chicago,
Defendants.

No. 68 C 1979.

COMPLAINT FOR INJUNCTION AND DECLARATORY JUDGMENT.

(Filed Oct. 23, 1968.)

1. The Police Department of the City of Chicago is a duly authorized agency of the City and is empowered with the duty to enforce the ordinances and laws of the City of Chicago and the State of Illinois.

2. Defendant James B. Conlisk is Superintendent of the Police Department of the City of Chicago and is authorized to direct the police of the City of Chicago with respect to all matters referred to in the prayer of this complaint.

3. Defendant Richard J. Daley is Mayor of the City of Chicago and is responsible for the conduct of the agencies of such city, including the Police Department of the City of Chicago.

[C3] 4. Jurisdiction of this court is based on 42 USC, Section 1983 and 28 USC, Section 1343 which provide for

interlocutory and permanent injunctive relief by this court, and 28 USC, Section 2201, which provides for declaratory judgment by this court.

5. On March 26, 1968 the following ordinance relating to picketing and demonstrating was adopted by the City Council of the City of Chicago, and is in effect at the present time:

> Be It Ordained by the City Council of the City of Chicago:
>
> Section I. The Municipal Code of the City of Chicago is amended by striking Chapter 193, Section 1, in its entirety, and inserting therefor the following:
>
> 193-1. A person commits disorderly conduct when he knowingly:
>
> . . . . . .
>
> (i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute;

6. Prior to the passage of the above-quoted Ordinance, plaintiff Earl D. Mosley of 7326 South Stewart Avenue, Chicago, Illinois had on several week-day afternoons, each week for many weeks, peacefully walked, while school was in session, on the public side-walk right- [C4] of-way within 150 feet of Jones Commercial High School, located at 610 South State Street, Chicago, Illinois, carrying a sign, to protest and demonstrate against certain conditions at said High School.

7. Plaintiff wishes to continue to peacefully engage in said protest, and to demonstrate by carrying said sign on the public side-walks within 150 feet of said school while

said school is in session, to inform the teachers, students, parents of students and others concerned with Jones Commercial High School of his beliefs concerning said conditions at said school.

8. Shortly after the passage of said ordinance, plaintiff was informed by an employee of the Public Relations Department of the Police Department of the City of Chicago that said ordinance had been adopted, and that it was now illegal to picket within 150 feet of a school when the school is in session as stated by said ordinance. Plaintiff was advised that, in the opinion of said employee, the picketing which plaintiff had been engaged in is made illegal by said ordinance.

9. Plaintiff later went to the local District Headquarters or Precinct Headquarters of the Police Department of the City of Chicago, having jurisdiction over the portion of the city wherein said high school is located, [C5] and inquired of Police Officer Sergeant Hays, Badge No. 1005, on duty at said Headquarters, and in charge at the time, whether or not plaintiff would be arrested for demonstrating at said school in the manner described in paragraphs 6 and 7. Plaintiff was informed by said Police Officer that such activities would be illegal, and that plaintiff would be arrested promptly if he were to engage in said activities. Plaintiff's attorney contacted by telephone an attorney in the office of the corporation counsel of the City of Chicago and inquired of said attorney whether the City and said office regarded said Ordinance as constitutional. Plaintiff's attorney was informed that said office and the City regarded said Ordinance as constitutional and would uphold the enforcement thereof.

Plaintiff has taken every reasonable action, short of actually demonstrating as plaintiff wishes to do and being arrested for said demonstrating, to determine how said

Ordinance is being enforced by the Police Department and the City of Chicago. On the basis of the information obtained, plaintiff has therefore refrained from engaging in said activities which he would otherwise engage in.

10. The Ordinance, Chapter 193-1(i) of the Municipal Code of the City of Chicago is unconstitutional on its face, because said Ordinance unduly and unnecessarily restricts plaintiff's rights of free speech and plaintiff's right to peacefully and quietly express his convictions [C6] and beliefs, in violation of the First and Fourteenth Amendments to the Constitution of the United States, and because said Ordinance denies to plaintiff equal protection of the law in violation of the First and Fourteenth Amendments to the Constitution of the United States.

11. Said Ordinance is also unconstitutional as it is being enforced in regard to plaintiff, in violation of plaintiff's rights under the First and Fourteenth Amendments enumerated in paragraph 10 above.

12. Plaintiff is irreparably damaged by the Ordinance complained of herein, and plaintiff is without adequate remedy at law.

PLAINTIFF THEREFORE PRAYS FOR THE FOLLOWING RELIEF.

1. That the Defendants Police Department of the City of Chicago, James B. Conlisk, and Richard J. Daley may answer this Complaint and each statement therein made.

2. That this Court declare the Ordinance cited above, Chapter 193-1(i) of the Municipal Code of the City of Chicago, is unconstitutional and shall not be enforced.

3. That this Court issue a Preliminary Injunction pending hearing on the merits and then a permanent injunction

restraining the Defendants, and each of them and their officers, agents, servants, and representatives as follows:

[C7] (A) From interfering in any manner with the free exercise by plaintiff of his right to peacefully and quietly picket on the right-of-way around Jones Commercial High School.

(B) From arresting, prosecuting, or imposing any criminal penalties upon plaintiff for peacefully and quietly picketing on said right-of-way.

(C) From directing, assisting, aiding or abetting in any manner whatsoever any person or persons to commit any of the acts enjoined by this court.

4. That plaintiff may have such other and further relief as is just and equitable.

Dated: October, 1968.

/s/ Joe C. Young,
Alberts, Brezina & Lund,
33 North Dearborn Street,
Chicago, Illinois 60602,
Attorney for Plaintiff.

Of Counsel:
David Goldberger,
American Civil Liberties Union,
6 South Clark Street,
Chicago, Illinois,
236-5564.

[C8-C19] • • •

[C20] IN THE UNITED STATES DISTRICT COURT.

No. 68 C 1979.

ANSWER TO THE COMPLAINT FOR INJUNCTION AND DECLARATORY JUDGMENT.

(Filed Feb. 25, 1969.)

Now come the defendants, Police Department of the City of Chicago, James B. Conlisk, Superintendent of the Police Department of the City of Chicago and Richard J. Daley, Mayor of the City of Chicago, by their attorney, Raymond F. Simon, Corporation Counsel of the City of Chicago, and in answer to the complaint of the plaintiff answers as follows:

1. These answering defendants admit the allegations therein contained in paragraph 1;

[C21] 2. These answering defendants admit the allegations therein contained in paragraph 2;

3. These answering defendants admit the allegations therein contained in paragraph 3;

4. These answering defendants deny that this court has jurisdiction under Title 42 U. S. C. Section 1983 and 28 U. S. C. Section 1343 of the United States Code;

5. These answering defendants admit the allegations therein contained in paragraph 5;

6. These answering defendants do not have sufficient knowledge to either affirm or deny the allegations therein contained in paragraph 6, and therefore will deny the same and demand strict proof thereof;

7. These answering defendants do not have sufficient knowledge to either affirm or deny the allegations therein contained in paragraph 7, and therefore will deny the same and demand strict proof thereof;

8. These answering defendants do not have sufficient knowledge to either affirm or deny the allegations therein contained in paragraph 8, and therefore will deny the same and demand strict proof thereof;

[C22] 9. These answering defendants do not have sufficient knowledge to either affirm or deny the allegations therein contained in paragraph 9, and therefore will deny the same and demand strict proof thereof;

10. These answering defendants deny each and every allegation of paragraph 10 therein contained;

11. These answering defendants deny each and every allegation of paragraph 11 therein contained;

12. These answering defendants deny each and every allegation of paragraph 12 therein contained.

Wherefore, these answering defendants deny that the plaintiff is entitled to said relief which he prays for in his complaint and that said complaint should be dismissed.

[C26] IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois.

No. 68 C 1979

PLAINTIFF'S REQUESTS FOR ADMISSION NOS. 1-7 TO DEFENDANT.

(Filed June 11, 1969.)

Please Take Notice that Plaintiff, Earl Mosley, requests each of the Defendants, Police Department of the City of Chicago, James B. Conlisk and Richard J. Daley, pursuant to Rule 36 of the F. R. Civ. P., within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinant objections to admissibility which may be interposed at trial.

[C27] 1. Defendant's contend that the portion of the Ordinance involved in this case, Chapter 193, Section 1(i) is valid and enforceable, and Defendant's intend to enforce said Ordinance.

2. If Plaintiff walks peacefully and quietly on the public right of way within 150 feet of Jones Commercial High School, during school session, carrying a sign with language protesting policies of the school administration, as Plaintiff has alleged in his Complaint that he did prior to the enactment of the Ordinance referred to in Request No. 1, Plaintiff will be considered in violation of said Ordinance.

3. Referring to Request No. 2, Plaintiff will be arrested by agents or employees of the Police Department of the City of Chicago, on the grounds that Plaintiff is in violation of said Ordinance.

4. The Police Department of the City of Chicago is not aware of any reason to believe that the Plaintiff has not conducted himself peacefully and quietly and in an orderly fashion at all times in connection with his alleged activities at or near Jones Commercial High School, referred to in Plaintiff's Complaint.

[C28] 5. The Police Department of the City of Chicago has no evidence upon which to base any belief that Plaintiff will not conduct himself in a peaceful orderly and quiet manner in the future, if he is granted the relief which he seeks in this action.

6. The Police Department of the City of Chicago is not aware of any disturbance caused by or resulting from any conduct on the part of Plaintiff which he alleged in his Complaint.

7. At all times when Plaintiff has engaged in the conduct alleged in the Complaint, Plaintiff has been either alone or with at most four or five other persons peacefully walking near Jones Commercial High School carrying a sign or signs.

Dated: April 8, 1969.

[C29-C30] • • •

IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois.

No. 68 C 1979

REPORT OF PROCEEDINGS BEFORE THE HONORABLE JOSEPH SAM PERRY.

(June 11, 1969.)

[1] * * *

[2] * * * Mr. Young: Your Honor, this case involves a constitutional challenge of a picketing ordinance of the City of Chicago.

The plaintiff in the case is a gentleman who is a concerned citizen, concerned about the educational system in Chicago and the schools; and, particularly, he is concerned about his belief that certain of the schools practice certain racial discrimination.

Now we plan to show that the plaintiff had proper reasons, had justification for this belief. We are not going to argue about whether he is right or not, because we do not think this is important to the case; but [3] that he did have reason to believe that a certain school in the City of Chicago—particularly Jones Commercial High School—does have certain practices which are racially discriminatory. The plaintiff, Mr. Mosley, tried in various ways to get the school to change its policies. He met with Superintendent Redman. He met with the director of the school. He met with various people in the school system.

The Court: Has he met with the school board?

Mr. Young: He did not meet with the Board itself, but he met with certain representatives of the Board.

The Court: Did he meet with the chairman of the Board, Mr. Whiston?

Mr. Young: I do not believe he did, your Honor, but as I said, he did meet with representatives of the Board.

As a result of these meetings, he felt that he was not really accomplishing the purpose he wanted and he decided that the only alternative he had was to go to the school and picket, actually carrying a sign, walking to and fro in front of the school on the public sidewalk, with the sign stating his belief in certain [4] discriminatory practices at Jones. Particularly, I might add, the practice that he was mainly concerned about was that he felt there was a quota system at Jones in terms of admissions, in that Jones was only allowing any certain number of Negro students each year.

I think that is enough, dealing with the beliefs of the plaintiff, to show that he did have a reason to believe that discrimination was being practiced and he had a reason to believe that the other means he had tried had not worked.

The real issue, however, is that Mr. Mosley picketed the school for many months, day in and day out. He is a mail carrier and when he gets off at 2:30 in the afternoon, he would go almost every day to the school and picket for a couple of hours, trying to get something accomplished.

I believe it was on April 5th, 1968, the City of Chicago passed an ordinance which prohibited picketing of schools.

I would like to just read the ordinance. It is very brief:

"Be it ordained by the City Council of the City of Chicago, the Municipal Code of the City of Chicago [5] is amended by striking Chapter 193, Section 1, in its entirety and inserting therefor the following:

"193(1) A person commits disorderly conduct when he knowingly"—and this is Subsection (i)—"pickets

or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session or one-half hour before the school is in session and one-half hour after the school session has been concluded; provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute."

Your Honor, this last proviso is the one which we are particularly challenging in this case. We have maintained that the proviso regarding the labor dispute not only constitutes a violation of the equal protection clause of the Constitution; but because it is in there, it shows that this ordinance was really designed to prohibit the content of certain picketing. In other words, it is not picketing itself that this ordinance is concerned with. It is certain kinds of picketing and this is shown by [6] the proviso, I think, so it violates not only the equal protection clause but the free speech clause of the Thirteenth and Fourteenth Amendments.

The Court: All right, let me have the opening statement for the City.

Mr. Chambers: Thank you, your Honor.

We will make it very brief. We have certain memoranda; and if it please the Court, may we tender certain memoranda to the Court that we have.

The Court: Yes, you may do so.

I take it you are giving a copy to counsel?

Mr. Chambers: Yes, your Honor.

We will respond very briefly. Counsel states that there is racial discrimination at Jones or there is the belief that there is racial discrimination at Jones Commercial School.

It is our position that this is irrelevant and immaterial to the issues. The issue here and the challenge is whether or not this particular ordinance, Section 193(1), Subsec-

tion (i) of the Municipal Code of the City of Chicago is unconstitutional.

Counsel states that it violates the equal protection and freedom of speech clause of the United States [7] Constitution. It is the City's position that the ordinance is constitutional. We feel the ordinance is not a violation of the equal protection clause of the Fourteenth Amendment; and that it is not a violation of the freedom of speech, in that it is not a complete prohibition of picketing at the school.

The Court: You maintain that it is a regulation?

Mr. Chambers: It is only a reasonable regulation.

The Court: Your position is that you do not regulate picketing by a labor organization at the same time. That is the heart of their complaint, as I see it.

Mr. Chambers: Yes, your Honor.

It is further the position of the City that the City has no right to regulate labor disputes. We feel that certain federal laws have preempted the City from interfering; and that if there is a labor dispute with the union and the Board of Education, that the City would not be in a position to regulate it.

The Court: Does that give individuals who belong to a labor union more protection or different protection from that accorded to someone who does not belong [8] to a labor union?

Mr. Chambers: No, that is not our position. Our position, your Honor, is that there are certain laws, federal laws, that regulate labor disputes. We do not feel the City has a right—

The Court: Your position is that the federal Government has preempted the law? Congress has preempted laws in the field of labor?

Mr. Chambers: Yes, your Honor, we have that in our

memorandum and we also have legal authority to that effect.

We realize the crux of counsel's argument, but the ordinance was carefully thought out and this particular provision of the subsection of the disorderly conduct ordinance was carefully thought out and placed in here. We even thought of the idea of some discriminatory clauses in the ordinance. The City was not unmindful, those who framed this ordinance, of this particular problem.

This is our position. We feel that the City is preempted by certain federal laws governing labor disputes and for this reason, this particular section was placed into the subsection of the ordinance.

We further feel, your Honor, that the qualification [9] is reasonable and it is reasonable as to time, manner and place.

It is our further position that the constitutional rights are not absolute, but limited for the protection of the rights of others. Now this defendant is not completely prohibited from picketing at, near or about the school during certain hours. It is only within 150 feet during the time that the school is in session, one-half hour before or one-half hour afterward. But even during the time that the school is in session, this plaintiff may picket during all hours of the school as long as it is at least 150 feet away from the school while it is in session and one-half hour before and one-half hour afterwards.

This is our position. We feel that this ordinance is not a violation of the equal protection or freedom of speech. He is not completely prohibited from the kind of activity that he seeks to get injunctive relief against.

This is our position.

[10] EARL MOSLEY, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Young.

* * * * *

Q. Now, Mr. Mosley, could you just explain in [11] general terms the facts which have led up to your complaint in this case?

A. Well, this all began about February, 1967. I was a member of Citywide Concerned Parents, the parents from the West Side, Far South Side, Near North Side. These are housing projects.

The fact came up that this new Jones Commercial High School that had been opened the previous February, 1967, would have a capacity of 1200 students. We know that down through the years, the older Jones Commercial High School, located at 607 South Plymouth Court, had a capacity of 600 students. At that school, we noticed that down through the years very few black children were allowed to attend Jones Commercial High School during the daytime. In some years, maybe two graduated; or maybe three, four, five, like that.

Then the Board of Education started putting out racial head counts.

The Court: Started putting out what?

The Witness: Racial head counts, the Board of Education. That became a Board of Education policy. I can say from '63 through '66, there was a head count at Jones and it seems that right down the line it [12] was 6 per cent black from '63 through '66. In round numbers, it came to from about 18 to 20 black students each year.

So I called this some sort of quota system.

In 1967 when the new school was about to open, we said

we would try to increase the black enrollment in the new Jones Commercial High School, which did have a capacity of 1200 students.

So at that time—on what day was that—as a member of the Concerned Parents, Jones High School became my project. So on Monday, August 7, 1967, I went to Jones Commercial High School for a tour. I took a tour of the school. I talked to Clarence B. Carey, the director of Jones High School. He has been there some 30 years, Clarence B. Carey has; and I asked him what would the black enrollment be that September when school started. He said at that time it would be 10 per cent.

So we had a meeting at the Board of Education on August 21st—I think that was a Monday—with Dr. James Redman. This is the Citywide Concerned Parents; and at that time I said they should—this was before school started in August 1967—I told Dr. Redman, when it became my chance to speak, that the black [13] enrollment in Jones should be much higher than this 10 per cent or 20 per cent, as they said it would be at that time.

I got no satisfaction there. So my threat was to start demonstrating at Jones. So I did. I think it was the second Monday in September of '67.. I started demonstrating at Jones High School. I stayed there about eight months; and most of the time I was by myself, except very few occasions Ma Houston used to come out and help me once in a while.

At no time did I cause any disturbance or block the sidewalk, because I knew on the corner of State and Harrison, there is a wide audience. You know, I can be seen in a place like that.

Well, anyhow, at the school dedication, I met Dr. Arthur R. Laney. He was Associate Superintendent of Schools at that time, in charge of vocational education. He told me to

come to his office. I said I would come and bring a committee with me.

We met at his office on November 21, at the Board of Education building. At that time, I had a committee. I had Mary Henry from the Urban League. I had Ma Houston from the Breadbasket and a couple of other people.

[14] Mr. Chambers: If the Court please, there is an objection at this time.

The Court: What is the objection?

Mr. Chambers: Your Honor, I fail to see the relevancy of this testimony, in relationship to the constitutionality of this ordinance. Also, there is no question pending. Further, there is an objection to the narrative form of the testimony.

The Court: Overruled. For what it is worth, it may go in.

You may go ahead.

By the Witness:

A. I will even sort of cut some of this off.

You see, the main idea—I am a mail carrier and I work on the North Side, you know, and I see all of the nice things going on. Then I come back where I live at 73rd and Stewart, and I belong to the PTA and I go out to the high school. I am really involved in the schools and have been involved for some years in school work and school children. I say it is very unfair, because down through the years, as Jane Adams said at one time, a black girl should be allowed to do office work.

[15] We have been kept out of office work down through the years, you know, and every morning I see the sight of so many black women coming on the North Side scrubbing floors and washing windows, and I said there should be some sort of turnabout.

Now I get right back to our committee. At our committee meeting, when we met Arthur Laney, we made some sort of demand that the class in September, 1968, be made half

black. That would be 300 black students that would be allowed to enter Jones Commercial High School.

We also said, since we found out they were having trouble inside the school, that—as one of the mothers came up and said, she would like to be treated like white. They do not treat the students right.

Another thing we find is that sometime during the operation at school, they would give black children undesirable jobs.

So we said to straighten out that sort of thing and put black teachers in Jones. This sort of thing has not been done, you know; but the main thing was to increase the enrollment in the school. I am still staying on one thing, to increase the enrollment in the school.

[16] Now as we sit here right now, according to the Board of Education head counts, there are 1,006 students in Jones Commercial High School. I say the school is being underutilized, because it has a capacity of 1200 students.

Now to break it down into race, there are supposed to be 742 white children in the school, 240 black children in the school and 20 Puerto Rican. According to the head count, it comes to about 23 per cent black. Then when you come down, say, to when graduation time comes, they are supposed to have a graduation this coming Friday. When you break it down into graduation time, you find that less than 100 black students will graduate from Jones Commercial High School; because I have made head counts. You think these numbers are inflated? Last June, 14 at Lane Technical High School, 21 black students graduated from Jones Commercial High School. Therefore, I think these figures are inflated and the main idea, the whole purpose of my sitting here, is that we need to be upgraded. Education is cheaper than relief and we have too many black people on relief. I think if a girl gets a Jones [17] education, when she grows up and her husband leaves her, instead of going

on ADC and relief, she can get a job; because that type of work they teach at Jones, they will have a skill and sort of keep holding their head up.

In other words, we want more black taxpayers instead of tax-eaters; and the only way to turn this thing around is that we have got to be allowed to go to the schools.

They said to get an education. If we are not allowed to enter the door, then that puts us in some sort of a bind that we cannot get out of and it is bad for the entire country, in the wider scope.

By Mr. Young:

Q. Mr. Mosley, based upon your beliefs regarding Jones School, you did begin to picket. When was that that you started picketing?

A. Well, I began the second Monday in September, 1967.

Q. What is the reason that you chose this form of protest?

A. The idea of exposing it to the public. I had a big picket sign there that said, "Jones High School [18] practices black discrimination. Jones High School has a black quota." That is what the sign said. I had a big sign and that was on the flip side.

• • • • •

[19] • • • By Mr. Young:

Q. Mr. Mosley, would you explain exactly where you were picketing?

Where is Jones Commercial School, first of all?

A. Well, Jones is at the intersection of Harrison and State Street. I used to begin at Harrison Street and walk to the other end of the school. The school is about a half a block long, right down State Street. I would say on only about six occasions have I had help, and that would be Ma Houston. I always kept myself out of the way. I know how to conduct myself, how to carry myself and I have had a lot

of experience. I stayed there quite a while and at no time did I block traffic. At no time did I bother people or interfere with people. My sign said what I would have to say.

Q. How did you first become informed of the ordinance that was passed by the City of Chicago?

A. Well, I was reading a newspaper. I read that they were going to pass a law that you could not picket a church or school within 150 feet during [20] school hours, and that the law would go into effect April 5.

The last day I demonstrated at the school was April 4, the date of Martin Luther King's assassination. I remember that date.

After that, I went to the Mayor's Commission on Human Relations to try to find some way out. What I did, I wrote letters to Bessie Lawrence, the district superintendent. I tried every means besides this demonstration, because it is tiresome, you know.

Q. Well, now, let me go back. After you read about the ordinance in the paper, did you at any time—were you at any time in contact with the Police Department of the City of Chicago?

A. Oh, by all means. I've been doing it so long. I contacted the Human Relations Section of the Police Department, always kept in touch with them, anything I did.

The Court: Did you ever go and start to picket, and were you ever restrained from picketing by the police at the school, being within 150 feet during school hours?

The Witness: No, at no time was I ever re-[21]strained.

The Court: You have never attempted to do so?

The Witness: Not after the law passed on April 5, 1968.

The Court: So you have not chosen the course of taking the law into your own hands and allowing yourself to be arrested for violating it. Instead, you have come into

Court seeking to set aside the ordinance as being unconstitutional.

Counsel, I will say this to you: You expect to rely, insofar as your case is concerned, not on an attempt to picket and being arrested; but you are going at it from the standpoint of obtaining an injunction against its enforcement?

Mr. Young: A declaratory judgment and an injunction.

The Court: All right, go ahead.

Mr. Young: Now, your Honor, we are going to introduce evidence and also requests for admissions that show that plaintiff would have been restrained. In fact, I might say right here that presently three people [22] are being prosecuted under this very same ordinance by the City of Chicago. This is not his case, of course, but I think counsel for the defense will—

The Court: Well, I do not take that position. Certainly, you do not have to attack an ordinance in that manner. I think you have attacked it in the correct manner, as far as that is concerned. Why go through all the bother of being arrested? You have taken the correct procedure, if you believe the law is unconstitutional, to attack it on the ground that it is unconstitutional, without having to wait for its enforcement against your particular client.

I just want to get the record straight as to whether he had been arrested or not.

Mr. Young: No, he has not been arrested.

The Court: It is not a prerequisite. If an act is unconstitutional, it is not a prerequisite that you wait and defy the act and then be brought into Court on criminal charges, and then go up in that manner. You have chosen the declaratory-judgment method, which [23] is to my mind a sound method to proceed on. It brings up the constitutionality just as effectively as if you went down

there and started picketing, got arrested, and then came in to seek to set aside the prosecution.

Mr. Young: Thank you, your Honor.

By Mr. Young:

Q. Did you at any time ask anyone at the Police Department about whether or not you would be arrested if you picketed within 150 feet of the school?

A. On one occasion last fall I went to the Eleventh Street Station and I spoke to the desk sergeant by the name of Sergeant Hayes, Badge No. 105, and I had a picture of Jones High School in one of the folders. I said, "Would I be arrested if I did picket in front of the school?"

He said yes, I would be arrested if I did picket in front of Jones High School. And that was $500 I heard.

Q. Now Mr. Mosley, since the ordinance went into effect, you said that you have—

The Court: Did you ask him if you were picketing [24] on behalf of a labor union? You did not ask that question, because the ordinance makes the exception. You did not ask him if whether or not you were picketing on behalf of a labor organization in a labor dispute, you would be arrested, because you understood—as I have understood your testimony and counsel's statement—that there is an exception in that this ordinance does not apply in a labor dispute.

Counsel has said that Congress has pre-empted the area of labor organizations, involving labor disputes. So they made an exception and you maintain that that is not equal protection of the law.

The Witness: That is right. I was unaware of the labor situation; but I know when I was across the street from the school, 150 feet away, you cannot hardly see me. The question that all of the people asked me was, "Where

is the school located?" They don't even see the school across the street, you know. So what it does, it takes away a certain amount of the effectiveness, because Jones High School is the only high school of this type in the country. People come from all [25] around—I have seen them day-after-day from everywhere—to look at Jones. You know, they intend to build schools in their area of the type of Jones; you have always got to explain that man across the street with a picket sign. I had become sort of a nuisance value, especially when I was in front of the school; but when I am across the street, I am sort of out of the picture, so to speak.

Mr. Young: I was just going into that, your Honor.

By Mr. Young:

Q. You have now said you have picketed the school since the ordinance went into effect; is that correct?

A. Yes, I have.

The Court: He has picketed it, but not within 150 feet.

By Mr. Young:

Q. But not within 150 feet.

Where have you been picketing the school since the ordinance went into effect?

A. Well, I haven't did too much picketing since [26] the ordinance went into effect, but I had an occasion last February 20, when they were dedicating the gymnasium there and Mayor Daley and a lot of people were there. This particular affair was going on and we were across the street from the school, out of sight, out of the picture, out of everything. We had a demonstration and nobody even knew anything about it, this past February 20, a nice cold day.

Since then, since it got warmer, in May I started demonstrating again every day until I got involved in this, in coming here.

But really, I am out of the picture at Jones. They can do like they want to.

Q. Do you feel that your picketing is less effective?

A. Very much so.

The Court: On what basis do you make the statement and give your testimony that there is a quota system in force there? Did you ever see any figures? Have you ever ascertained whether a person is denied the right to enroll because of color? Is there or is there not open enrollment? Is it not up to the persons [27] who qualify? Is there any standard that you know of? Do you know of any evidence whereby they set a quota of ten per cent, or six per cent, or twenty per cent, or fifty per cent?

There is no question in my mind but that there is a case right in point. There is a Supreme Court case in the Deerfield case, where the Court held there cannot be a quota system. Justice Frankfurter definitely set up that a quota system is illegal; but I am just asking you what evidence you have that there is a quota system maintained.

By the Witness:

A. Here is what I did. A key word is "recruitment". Sometime, I think, in 1966, there was a court order denying the City of Chicago—I mean, denying the State of Illinois federal funds, especially Chicago, on account of they said there was alleged discriminatory practices in our vocational high schools.

Right down to the point, I went to see Clarence B. Carey, the Director of Jones Commercial High School in March. That was March, 1968, and I said, "How [28] about increasing the enrollment in Jones? What are you going to do about that?"

He said, "We will recruit students for this coming class to start in September."

The Court: Well, really, it would not make any difference whether you were right or wrong about your belief that there was a quota system. It would not make any difference. Your right of free speech would be interfered with. The right to free speech includes the right to be wrong in your assertions, as far as that is concerned.

The real issue is what counsel for the City has said, as to whether or not it is constitutional; whether this is a case of where the equal protection of the law is denied, whether or not you can make an exception, on behalf of a labor union, on the theory that it would be in conflict with federal statutes governing labor organizations.

All right, is there anything else from the witness?

[29] Mr. Young: Well, your Honor, I would like to just ask this:

By Mr. Young:

Q. Now, Mr. Mosley, I think you mentioned it briefly, but I want to cover this again. Was there at any time any sort of disturbance involved in your picketing or have you ever hindered people from coming or going from the school, or in any way impeded progress around the school?

A. No, I wouldn't dare do that. I wouldn't dare do anything to impede anybody's progress coming to the school.

* * * * *

The Court: You have merely picketed, individually [30] yourself, and you have carried a placard and expressed your ideas of free speech and your opinions on the placard, as I understand your testimony, and you have never blocked anybody from entering the school, never interfered with people trying to enter or to conduct the business there. Is that your testimony?

The Witness: I never interfered with anyone.

Mr. Young: Your Honor, just one other thing I think I

would want to put in for the record. We asked the defendant certain requests for admissions which were not answered and are, therefore, deemed admitted.

The Court: Well, let us finish with this witness, first.

Mr. Young: Your Honor, I think I am through with the witness.

The Court: Do you wish to cross-examine this witness?

Mr. Chambers: I only have a few questions, your Honor.

The Court: Very well.

* * * * * *

[31] * * *

Cross-Examination by Mr. Chambers.

Q. Mr. Mosley, do you know whether there is, in fact, a quota system at the Jones Commercial High School?

A. Yes, there is a quota system at Jones Commercial High School.

Q. On what basis have you received this type of information?

A. I say it is a fact down through the years; black people were not admitted—

[32] Q. Have you seen any definite figures?

A. My definite figures would be from the enrollment in '68. In '68 the enrollment was 8 to 1 students. Out of 821, 165 were black.

Q. Who compiled these figures?

A. The Board of Education.

Q. Now do you know whether or not any black students are actually denied enrollment at Jones Commercial?

The Court: That is the crucial question, whether any are denied.

By the Witness:

A. No, I could not say any black student has been denied enrollment at Jones Commercial High School.

By Mr. Chambers:

Q. Now, Mr. Mosley, you, of course, realize you can still picket at the Jones Commercial High School? You know that?

A. Yes, 150 feet away from Jones.

Q. Yes. You know that you can do that?

The Court: During certain school hours. What are the hours?

Mr. Chambers: It is one-half hour before school, [33] during school hours, and one-half hour afterwards.

The Court: School begins at what time?

Mr. Chambers: I do not know, your Honor. But he may picket even during school hours. He may picket at any hour.

The Court: But 150 feet away.

Mr. Chambers: Yes.

The Court: And a half hour before school and a half hour after.

Mr. Chambers: Yes, and during school hours, he may not picket within 150 feet.

The Court: A half hour before school and a half hour after, he may picket wherever he wishes.

Mr. Chambers: Yes.

By Mr. Chambers:

Q. You realize that?

A. Yes.

The Court: That ordinance is not very clear, is it? That is, if it does not fix the hour of the opening of schools.

Mr. Chambers: Well, your Honor, all of the public schools do not open at the same time.

[34] It is my feeling that the ordinance is very clear.

The Court: The ordinance is very clear as far as the language is concerned; but so far as the enforcement of it is concerned, that leaves it rather variable. It will apply at one hour in one place and at another hour in another place;

and maybe one day it will apply at the same place at one hour, and subject to the will of the principal, probably, or the Board of Education, it may be changed. It certainly would seem to me that there ought to be a fixed hour, so that a person would understand certainly how to govern themselves. The ordinance seems to me to be vague in its meaning. It is clear in its language, as far as the language is concerned; but the meaning, by not fixing any specific hour but leaving it at a variable hour, it is vague.

Mr. Chambers: It was the intention of the framers of this ordinance, your Honor, to encompass every opening hour and closing hour of the schools. Since the hours of the schools vary themselves, if you set a specific hour, it might not cover all of the schools.

[35] The Court: Go ahead.

Mr. Chambers: I have no further questions, your Honor.

The Court: No further cross-examination.

Is there any further redirect?

Mr. Young: Well, your Honor, I thought the defendant contended it was not important whether Mr. Mosley had any reason to believe that there was discrimination. I could ask some more questions along that line.

The Court: Very well. The witness is excused.

That concludes your evidence, does it?

Mr. Young: Yes.

The Court: You have no evidence to put in?

Mr. Chambers: The City has no evidence, your Honor. We feel that the arguments are purely legal.

[36] Mr. Chambers: Yes, but we heard your Honor also make certain statements.

The Court: This is all the evidence that you have on behalf of the plaintiff in this case?

Mr. Young: Yes, your Honor.

The Court: As far as you are concerned, the defendant rests?

Mr. Young: Your Honor, I am sorry, I did want to read into the record the request for admissions which we submitted and which are deemed admitted, if I may.

The Court: All right. The witness is excused from the witness stand.

(Witness excused.)

The Court: All right, you may proceed to read your requests for admissions into evidence.

Mr. Young: These requests were served on the City and were not responded to and are deemed admitted, your Honor.

Number one: Defendants contend that the portion of the ordinance involved in this case, Chapter 193, Section 1(i) is valid and enforceable and defendants intend [37] to enforce said ordinance.

Paragraph two: If plaintiff walks peacefully and quietly on the public right-of-way within 150 feet of Jones Commercial High School during school sessions, carrying a sign with language protesting policies of the school administration, as plaintiff has alleged in his complaint that he did prior to the enactment of the ordinance referred to in Request No. 1, plaintiff will be considered in violation of said ordinance.

Referring to Request No. 2, plaintiff will be arrested by agents or employees of the Police Department of the City of Chicago on the ground that plaintiff is in violation of said ordinance.

Paragraph 4: The Police Department of the City of Chicago is not aware of any reason to believe that the plaintiff has not conducted himself peacefully and quietly in an orderly fashion at all times in connection with his alleged activities at or near Jones Commercial High School, referred to in plaintiff's complaint.

Paragraph 5: The Police Department of the City of Chicago has no evidence upon which to base any [38] belief that plaintiff will not conduct himself in a peaceful, orderly and quiet manner in the future if he is granted the relief which he seeks in this action.

Paragraph 6: The Police Department of the City of Chicago is not aware of any disturbance caused by or resulting from any conduct on the part of plaintiff which he alleged in his complaint.

Paragraph 7: At all times when plaintiff has engaged in the conduct alleged in the complaint, plaintiff has been either alone or at most with four or five other persons, peacefully walking near Jones Commercial High School carrying a sign or signs.

That is it, your Honor.

The Court: They are admitted into evidence.

Are there any comments by defense counsel?

Mr. Chambers: Your Honor, the City does have a motion. Essentially, the City fails to see where Mr. Mosley has been irreparably harmed in the enactment of this ordinance.

We feel that he has not shown the existence of an actual controversy between the parties, the City of Chicago and himself, as required by Article 3 of the United States Constitution, and Section 220 of the Judicial [39] Code, Title 28.

As the City stated before, he fails to have indicated any irreparable harm or injury that he has suffered as the result of the enactment of this ordinance.

Therefore, we ask for a directed verdict.

[C31] IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois

No. 68 C 1979

MOTION FOR DIRECT VERDICT IN THIS CAUSE OF ACTION FOR INJUNCTION AND DECLARATORY RELIEF.

(Filed Jun. 11, 1969)

Now come the defendants, Police Department of the City of Chicago, James B. Conlisk, Superintendent of the Police Department of the City of Chicago, and Richard J. Daley, Mayor of the City of Chicago, by their attorney, Raymond F. Simon, Corporation Counsel of Chicago, and move this Honorable Court for a directed verdict for the defendant since plaintiff's complaint and the evidence presented being materially and substantially defective in law and fact fails to state a cause of action upon which any relief can be granted for one or more of the following reasons:

[32] 1. The plaintiff has failed to show the existence of an actual case or controversy between the parties of the nature required by Article III of the United States Constitution and Section 220 of the Judicial Code, Title 28.

2. The plaintiff is not subject to any quasi criminal prosecution for the violation of Chapter 193 Section 1 (i) of the Municipal Code of the City of Chicago.

3. The complaint fails to indicate any irreparable harm or injury that this plaintiff has suffered.

4. Chapter 193 Section 1 (i) of the Municipal Code of the City of Chicago does not violate the First and Fourteenth Amendments.

5. Chapter 193 Section 1 (i) does not deny equal protection of the law to this plaintiff.

[C33-C49] • • •

[43-62] • • •

[63] UNITED STATES DISTRICT COURT.

Northern District of Illinois

Before the HONORABLE JOSEPH SAM PERRY.

Cause No. 68-C-1979 Date July 22, 1969

Title of Cause

Earl D. Mosley vs. Police Department of the City of Chicago, et al.

The court has considered the motion of defendants for a directed verdict with memorandum in support thereof, the plaintiff's memorandum in opposition thereto and defendants' reply and is of the opinion that said motion for a directed verdict should be granted.

The court continues the cause under advisement and orders the defendants to present within 10 days proposed Findings of Fact and Conclusions of Law and a final Decree herein.

/s/ J. S. PERRY.

[64-65] • • •

[67] IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois

No. 68 C 1979

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came for trial on June 6, 1969 and the Court, having heard the evidence and considered the stipulation of the parties finds the facts and states the conclusions of law as follows:

Findings of Fact.

1. Earl D. Mosley, the plaintiff, prior to March 26, 1968, had repeatedly engaged in the peaceful picketing of Jones Commercial High School carrying a sign or walking in an orderly manner with four or five other persons carrying signs.

2. On March 26, 1968, the City Council of the City of Chicago passed the following ordinance:

> "A person commits disorderly conduct when he knowingly
>
> [68] Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute." Chapter 193 of The Municipal Code of the City of Chicago, Sec. 1 (i).

3. If the plaintiff walks peacefully and quietly in the public right of way during school sessions, as he did prior

to the enactment of the ordinance, plaintiff will be considered in violation of the ordinance and will be subject to arrest by agents of the Police Department of the City of Chicago, on the grounds that he is in violation of the ordinance.

4. The plaintiff therefore sought a Declaratory Judgment pursuant to Section 2201 of the Judicial Code Title 28 to determine the constitutionality of the ordinance.

Conclusions of Law.

1. The complainant properly sought a Declaratory Judgment pursuant to Section 2201 of the Judicial Code Title 28 to challenge the constitutionality of Chapter 193-1(i) of the Municipal Code of the City of Chicago since an actual case or controversy may arise without a citizen subjecting himself to arrest for the exercise of his immemorial First Amendment rights. The plaintiff's customary behavior of peacefully picketing Jones Commercial High School prior to March, 1968, [69] created a legal interest of such immediacy and reality as to enable him to challenge the constitutionality of the ordinance in a Federal court.

2. Section 193-1 of the Municipal Code of the City of Chicago does not violate Amendment I of the Constitution of the United States of America since it is a reasonable regulation as to time, place and manner. Rights of free speech and assembly, while fundamental in our democratic society, do not mean that everyone with opinions or beliefs to express may address a group at any public place at any time.

3. Section 193-1(i) of the Municipal Code of the City of Chicago does not violate Amendment XIV of the Constitution of the United States of America in that the

exemption of labor unions is a reasonable classification and the City has no right to regulate labor disputes as they are governed by Federal labor laws.

4. Section 193-1(i) of the Municipal Code of the City of Chicago is not unconstitutionally vague since the ordinance has reasonable and readily determinable standards.

5. This cause should be dismissed.

/s/ J. S. PERRY,
Judge.

Dated: Chicago, Illinois
August 19, 1969.

[70] IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

EARL D. MOSLEY,
Plaintiff,
vs.
POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, SUPERINTENDENT OF THE POLICE DEPARTMENT, ETC., AND RICHARD J. DALEY, MAYOR OF THE CITY OF CHICAGO,
Defendants.
No. 68 C 1979

ORDER.

This cause having come on for trial by the court without a jury, and the court having heard argument of counsel and being fully advised in the premises and having filed its findings of fact and conclusions of law simultaneously herewith,

It is Ordered, Adjudged and Decreed that the complaint herein for declaratory judgment be and it hereby is dismissed.

ENTER:

/s/ J. S. PERRY,
Judge.

Dated: Chicago, Illinois
August 19, 1969.

[71] • • •

[72] IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 68-C-1979) • •

NOTICE OF APPEAL.

Notice is hereby given that Earl D. Mosley, plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order of the District Court dismissing the plaintiff's complaint entered in this action on the 19th day of August, 1969.

/s/ DAVID GOLDBERGER,
David Goldberger,
One of the Attorneys for Earl D. Mosley.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

I, Elbert A. Wagner, Jr., Clerk of the United States District Court for the Northern District of Illinois, do hereby certify to the United States Court of Appeals, for the Seventh Circuit, that the documents submitted herewith and annexed hereto are the original papers filed and entered of record in my office, on the dates designated in the List of Documents, and together with a true copy of the docket entries as they appear in the official dockets in this office, and that these and One (1) Volume of the Clerk's File Copy of Transcript of Proceedings, transmitted herewith under separate certificate for the sake of convenience, constitute the Complete Record on Appeal in the cause entitled: Earl D. Mosley vs. Police Department of City of Chicago, et al., No. 68 C 1979.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 24th day of October, 1969.

ELBERT A. WAGNER, JR.,
Clerk.

By: /s/ BEVERLY V. PETERS,
Deputy Clerk.

(SEAL)

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

Thursday, October 29, 1970.

Before:

HON. JOHN S. HASTINGS, *Senior Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*
HON. OTTO KERNER, *Circuit Judge*

No. 18021

EARL D. MOSLEY,
Plaintiff-Appellant,

vs.

POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, Superintendent of the Police Department, etc., and RICHARD J. DALEY, Mayor of the City of Chicago,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT ORDER.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, with costs, and that this cause be, and it is hereby, REMANDED to the said District Court with directions to grant plaintiff the injunctive relief sought below, in accordance with the opinion of this Court filed this day.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

SEPTEMBER TERM, 1970—SEPTEMBER SESSION, 1970

No. 18021

EARL D. MOSLEY,
Plaintiff-Appellant,

vs.

POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, Superintendent of the Police Department of the City of Chicago, and RICHARD J. DALEY, Mayor of the City of Chicago,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

October 29, 1970

Before HASTINGS, *Senior Circuit Judge*, and KILEY and KERNER, *Circuit Judges*.

HASTINGS, *Senior Circuit Judge*. Earl D. Mosley brought this action in the federal district court against the City of Chicago Police Department, the Superintendent of the Chicago Police Department and the Mayor of Chicago seeking declaratory and injunctive relief, pursuant to Title 28 U. S. C. A. § 2201 and Title 42 U. S. C. A. § 1983, to enjoin the enforcement of Chapter 193-1(i) of the Chicago Municipal Code. He alleged in substance that the ordinance abridges his rights of freedom of speech, equal protection and due process guaranteed by the First and Fourteenth

Amendments to the United States Constitution. The district court granted defendant's motion for a directed verdict and to dismiss the complaint. Subsequently, the trial court filed its supporting findings of fact and conclusions of law and entered a decree of dismissal. Plaintiff appeals. We reverse.

From early September, 1967 to April 4, 1968, plaintiff, a federal postal employee, frequently walked upon the public sidewalk adjoining Jones Commercial High School in Chicago carrying a sign that read, "Jones High School practices black discrimination. Jones High School has a black quota."

On April 5, 1968, an amendment to the city's disorderly conduct ordinance became effective prohibiting any picketing or demonstrating on a public way within 150 feet of any primary or secondary school from one-half hour before school hours until one-half hour after school hours.[1] Plaintiff, upon seeing a newspaper announcement of the amendment, contacted the Chicago Police Department and upon inquiry was advised that he would be arrested if he continued to picket the school. Defendants admit that at all times plaintiff's actions were peaceful and orderly, that he never interrupted the free flow of traffic to and from the school and that they had no reason to believe his activities would lead to acts which were not peaceful, orderly and quiet.

The district court held the ordinance to be a reasonable

1. The Chapter 193-1(i) amendment provides:

"193-1 A person commits disorderly conduct when he knowingly:

* * *

(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school has been concluded, provided, however, that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute."

regulation as to time, manner and place of picketing and not violative of plaintiff's First Amendment rights. It also held the exemption of labor picketing to be a reasonable classification and not violative of the equal protection clause of the Fourteenth Amendment. The court further held the ordinance was not unconstitutionally vague since it had reasonable and readily determinable standards.

We consider first the alleged denial of plaintiff's right of free speech. He argues that Chapter 193-1(i), *supra,* is overbroad.

We think it clear that the ordinance is overbroad. It lays down a blanket prohibition against all forms of picketing or demonstrating (other than labor picketing) within 150 feet of a school no matter how peaceful, pristine or innocuous. It prohibits one man carrying a sign from walking on a public sidewalk adjoining a school, without condition or reservation.

It cannot be questioned that the protection of the First Amendment extends beyond "pure speech" and includes the peaceful expression of views by picketing, marching or demonstrating. *Shuttlesworth* v. *City of Birmingham,* 394 U. S. 147 (1969); *Cox* v. *State of Louisiana,* 379 U. S. 536 (1965); *Thornhill* v. *State of Alabama,* 310 U. S. 88 (1940). In *Thornhill,* the Court dealt with an Alabama statute making it unlawful for any person "without just cause or legal excuse" to "picket" a place of business for the purpose of injuring its lawful business. It expressly noted the statute prohibited a single individual from walking slowly and peacefully back and forth on a public sidewalk in front of the premises of an employer carrying a sign that stated only the fact that the employer did not employ union men. 310 U. S., at 98. The Court declared the scope of the statute too broad since it prohibited conduct that would not occasion imminent and aggravated danger to community interests and impaired the effectiveness of the exercise of the

right to freely discuss a matter of public concern, industrial relations.[2]

Defendants justify this ordinance as a reasonable attempt to prevent the disruption of schools and to forestall violence in an area of protest and demonstration by the creation of a 150 foot "buffer zone" during school hours. There can be no doubt that picketing, since it contains elements other than pure speech, may be the subject of reasonable regulation. *Hughes* v. *Superior Court*, 339 U. S. 460, 464 (1950).[3]

This principle was reaffirmed in *Cox* v. *State of Louisiana*, 379 U. S. 559 (1965), where the Court upheld a statute prohibiting picketing near a courthouse with the intent to obstruct justice for the reason that it was precise and was narrowly drawn to protect a valid state interest. *Accord*, *Cameron* v. *Johnson*, 390 U. S. 611 (1968).

Obviously, the City of Chicago could enact an ordinance to prevent the disruption of the educational process that would not violate plaintiff's right of free speech. This does

2. It cannot be seriously contended, in the context of the instant case, that the issue of race relations today is any less a matter of public concern than was industrial relations in 1940.

3. The examples of regulation of conduct normally associated with the exercise of First Amendment rights are numerous. *Hughes* upheld the state's right to prohibit picketing to enforce a specific demand for selective racial hiring. *Cox* v. *New Hampshire*, 312 U. S. 569 (1941), found a parade licensing scheme constitutional because the license could only be refused for considerations of public convenience. To the same effect is *Kovacs* v. *Cooper*, 336 U. S. 77 (1949) involving loudspeaker regulation. As was stated in *Cox* v. *State of Louisiana*, 379 U. S. 536, 554 (1965), "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time." But always there must be a balance struck between the right of the individual to communicate and the rights of society. See, *e.g.*, *Shuttlesworth* v. *City of Birmingham, supra; Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc., infra; Thornhill* v. *State of Alabama, supra.*

not require unnecessarily broad proscription of activities constitutionally subject to state regulation. *N. A. A. C. P.* v. *State of Alabama,* 377 U. S. 288, 307 (1963); *Shelton* v. *Tucker,* 364 U. S. 479 (1960).

In the subject case where the sole question is right of access to a public way for the purpose of expression of views and where there is no danger of interference with a valid state interest,[4] plaintiff's First Amendment right to picket may not be constitutionally denied. *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.,* 391 U. S. 308 (1968). Here, as in *Thornhill* v. *State of Alabama, supra,* and *Davis* v. *Francois,* 5 Cir., 395 F. 2d 730 (1968), the instant ordinance did not evince any attempt to balance the individual's right to effective communication and the state's interest in peace and harmony. As was noted in *Amalgamated Food Employees, supra,* at 315, "* * * streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely."

We conclude that Chapter 193-1(i) denies absolutely plaintiff's right to express his views by the mere carrying of a sign as he walks upon the public sidewalk adjoining the school during school hours. It is, therefore, patently unconstitutional on its face.

---

4. Defendants admitted that plaintiff's actions were at all times peaceful and that they had no reason to believe that his actions would lead to disruption. Indeed, all the ordinance requires for criminal liability is that a man walking on a public sidewalk adjoining a school be carrying a sign. There is no requirement, as in *Cox* v. *State of Louisiana,* 379 U. S. 559 (1965), of an intent to disrupt. There is no prerequisite, as in *Cameron* v. *Johnson, supra,* of an interference with ingress and egress. Nor is there any showing of a legitimate state interest requiring the proscription of any and all signs carried by pedestrians near schools.

Having determined that Chapter 193-1(i) is unconstitutional on its face, we do not deem it necessary to examine plaintiff's other constitutional contentions.

For the foregoing reasons, the judgment of the district court is reversed and this cause is ordered remanded with directions to grant plaintiff the injunctive relief sought below.

REVERSED AND REMANDED.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. .....

POLICE DEPARTMENT OF THE CITY OF CHICAGO, ET AL.,
Petitioners,

vs.

EARL D. MOSLEY.

Upon consideration of the application of counsel for petitioners,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 26, 1971.

/s/ THURGOOD MARSHALL,
Associate Justice of the Supreme Court of the United States.

January 20, 1971.

SUPREME COURT OF THE UNITED STATES

No. 70-87, October Term, 1971

POLICE DEPARTMENT OF THE CITY OF CHICAGO, ET AL.,
Petitioners,

vs.

EARL D. MOSLEY,

ORDER ALLOWING CERTIORARI. Filed October 12, 1971.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 70-5106 and a total of one hour is allotted for oral argument.